IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 57 OF 2006.

The Commissioner of Income Tax,
having office at Aayakar
Bhavan Patto, Plaza,
Panaji, Goa. .... Appellant.

Versus

M/s Sesa Kemmbla Coke Co. Ltd.,
Sesa Ghor, Pato Plaza,
Panaji, Goa. .... Respondent.

Shri S. R. Rivankar, Advocate for the Appellant.

Shri V. Frank, Advocate for the Respondent.

CORAM: J. N. PATEL &
N. A. BRITTO, JJ.

DATE: 27th November, 2006.

O R D E R: (Per J.N. Patel, J.)

The Revenue has preferred this appeal, impugning the Order dated 2.01.2006 of the Income Tax Appellate Tribunal in I.T.A. No. 218/PNJ/2002.

2. It is the contention of the Revenue that the Tribunal has erred in interpreting the various clauses of the Technical Collaboration Agreement dated 18.08.93 and holding that the amount of US $ 20,00,001/- received by the assessee under the said Agreement was in the nature of capital

receipt.

3. It is contended that it will have to be construed that it is a revenue receipt as the payment was received in ordinary course of the business of the assessee for loss of production sustained by them and as has no nexus to capital expenditure.

4. The contention of the Revenue is mostly based on a conjoint reading of the various clauses of the said Agreement which, in our view, has been rightly dealt with by the Tribunal and the Tribunal has given specific reason in para 4.2 of the impugned Order as to why the said receipt will have to be considered as a capital receipt by placing reliance on a Judgment rendered by the Andhra Pradesh High Court in the case of Commissioner Income Tax Vs. Barium Chemicals Ltd. (1987) 168 ITR 164. Therefore in the facts and circumstances, we do not think that any substantial question of law arises for our decision.

Therefore, the Appeal is dismissed.

J. N. PATEL, J.

sl. **N. A. BRITTO, J.**